IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.261 OF 2007

WITH

CIVIL APPLICATION NO.540 OF 2007

Shri.Ashok Shankarrao Khaire ...Appellant

Versus

Ramchandra Chimaji Pate & Ors. ...Respondents

.....

Mr.S.G.Surana for Appellant.

None for Respondents.

.....

CORAM: A.M.KHANWILKAR, J.

JULY 17, 2007.

P.C.

1. Heard Counsel for the Appellant.

2. The question sought to be argued before this Court is being raised for the first time in the present Appeal. No pleading is brought to my notice to support the argument that such stand was taken before the Trial Court.

3. I have no doubt that if such plea was to be taken before the Trial Court, the Trial Court would have had formulated first issue relating to jurisdiction of the Court to try and decide the Suit, if the cause of action was exclusively triable by the Rent Act. The fact whether the premises are covered by the provisions of the Rent Act, is a question of fact which ought to be pleaded and established at the trial. No such grievance was obviously made even before the Appellate Court as there is no reference in that behalf in the impugned Judgment.

4. Indeed, the question of jurisdiction of the Civil Court will go to the root of the matter. However, in absence of pleadings of the Appellant in relation to such issue and that issue not having been putforth before the Courts below, coupled with the fact that no request was made to this Court for permission to amend the pleadings, no interference is warranted in exercise of second appeal. Hence, dismissed.

A.M.KHANWILKAR, J.